

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement (hereafter referred to as "Agreement") is entered into this the 17th day of ~~August~~ ^{September}, 2015, by and between Nettie C. Smith (hereafter referred to as "Plaintiff") and the North Carolina Department of Health and Human Services, (hereafter referred to as the "Defendant"), (hereinafter collectively referred to as "Parties"), on the following terms:

WITNESS THAT

WHEREAS, Plaintiff was employed with the North Carolina Department of Health and Human Services (DHHS), Division of Services for the Blind (DSB), Rehabilitation Center for the Blind (hereinafter referred to as the Rehabilitation Center), as a ~~Rehabilitation Counselor~~ and ^{Residential Life Trainer} retired effective July 1, 2014; and

WHEREAS, disputes arose between Plaintiff and DHHS regarding the circumstances of Plaintiff's employment and Plaintiff's compensation; and

WHEREAS, Plaintiff filed a complaint for unpaid overtime wages under the Federal Labor Standards Act, Case No. 14 CVS 8630, Guilford County, NC; and

WHEREAS, Defendant has denied, defended against and disputed the allegations and claims contained in the complaint; and

WHEREAS, there is a bona fide dispute as to Plaintiff's allegations of unpaid overtime wages and the amount of any unpaid overtime wages owed; and

WHEREAS, the Parties find it mutually desirable to resolve any and all claims which have arisen or might arise as the result of Plaintiff's employment with Defendant.

NOW, THEREFORE, in consideration of the covenants and promises herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, **THE PARTIES DO AGREE TO THE FOLLOWING:**

1. **Settlement Payment & Dismissal.** For good and valuable consideration set forth below, the Parties agree as follows:

(a) The DHHS agrees that within 45 business days of receipt of the fully executed and notarized Agreement, it will make payment to Plaintiff the total gross amount of Seventeen Thousand Three Hundred Sixty Dollars (\$17,360.00) to settle disputed overtime wages. The amounts paid are for the following years that Plaintiff was employed with the DHHS:

August 2011 through December 31, 2011 – \$2340.00

January 1, 2012 through December 31, 2012 – \$4680.00

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January 1, 2013 through December 31, 2013 – \$4680.00

January 1, 2014 through June 30, 2014 – \$2340.00

Plaintiff understands and agrees that the gross amount of Seventeen Thousand Three Hundred Sixty Dollars (\$17,360.00) is subject to the deductions of federal and state taxes and other withholdings that Defendant is customarily required to withhold and report for employee income. Payment shall be made through the BEACON payroll system and payment of the above amount, minus the required withholdings, will be made by a single check issued to Plaintiff and deliverable to Plaintiff at her counsel's office.

(b) A second payment will be made to Smith, James, Rowlett & Cohen, LLP in the amount of Eight Thousand Six Hundred Eighty Dollars (\$8,680.00), no later than 30 business days after receipt by the DHHS of the fully executed agreement. This payment represents attorney's fees and costs.

(c) DHHS agrees to pay to the North Carolina Retirement System any additional amount it owes of the employer portion of Plaintiff's contributions that result from the additional income paid to Plaintiff according to the amounts listed in Paragraph 1(a) of this Agreement and at a rate determined by the North Carolina Retirement System.

(d) The payments described in subsections (a) through (c) constitute the full and complete settlement of any and all monetary and non-monetary claims between Plaintiff and Defendant, including claims for wages, salary, benefits, commissions, compensatory, general, special and punitive damages, injunctive or equitable relief, attorney's fees, interest, expenses, and costs actually incurred. Except as otherwise stated in this Agreement, Plaintiff expressly waives any and all monetary and non-monetary claims between Plaintiff and DHHS, including claims for wages, salary, back pay, benefits, entitlements, commissions, compensatory, general, special and punitive damages, injunctive or equitable relief, attorney's fees, interest, expenses, and costs actually incurred.

(e) Plaintiff expressly agrees that she shall execute the Agreement, and, within five (5) business days of executing the Agreement, terminate and dismiss, with prejudice, the suit styled: Nettie C. Smith v. State of North Carolina, 14 CVS 8630, currently pending in the Guilford County Superior Court.

2. Disavowal Of Any Further Or Additional Claims. Plaintiff agrees to withdraw, dismiss, and terminate, with prejudice, any and all pending charges, complaints, claims, grievances or other actions, including but not limited to the aforementioned case 14 CVS 8630 filed with the Guilford County Superior Court, which are against or involve DHHS and which in any way relate to Plaintiff's employment relationship with DHHS, the termination of that employment relationship, the employment practices of DHHS, and/or any other conduct by DHHS occurring prior to the execution of the Agreement.


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4. Waiver And Release.

(a) Except as stated herein, based upon the consideration recited above and the mutual releases granted herein, Plaintiff hereby waives, releases and forever discharges any claims, rights, liabilities or entitlements now existing or arising in the future which are against or involve DHHS and which relate to Plaintiff's employment relationship with DHHS, the termination of that employment relationship, the employment practices of DHHS, and/or any conduct of the parties occurring prior to the execution of the Agreement, including, but not limited to any contract claim, tort claim, claim for wages, salaries, commissions, bonuses, severance pay or fringe benefits, and any claim based upon any state or federal wage, employment or common law, or amendments thereto, including, but not limited to: (i) any claim arising under the North Carolina State Personnel Act, N.C. Gen. Stat. § 126-1, et seq.; (ii) any claim arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.; (iii) any claim arising under the North Carolina Wage and Hour Act, N.C. Gen. Stat. § 95-25.1, et seq.; (iv) any claim arising under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.; (v) any claim arising under the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq.; (vi) any claim arising under the North Carolina Persons with Disabilities Protection Act, N.C. Gen. Stat. § 168A-1, et seq.; (vii) any claim arising under, or predicated upon any other North Carolina or federal statute; and (viii) any claim arising under, or predicated upon North Carolina common law or federal common law.

(b) Plaintiff agrees not to institute or pursue any lawsuit, grievance, charge of discrimination, or proceeding in any forum that is in any way based upon or arising out of any matter involving Plaintiff and DHHS from the date of her employment through the execution of this Agreement; and further Plaintiff agrees to dismiss with prejudice and withdraw, in addition to what is described above, any other active lawsuits, charges of discrimination, complaints, or other actions with any state or federal agency based upon the said matters. If Plaintiff violates this provision, she will i) return all Payment received under this Agreement and Defendant's obligations under this Agreement will be null and void, except to the extent that the release set forth above would be invalidated; and ii) indemnify Defendant for all expenses that it incurs in connection with Plaintiff's violation of this provision.

5. Settlement Is Not Admission by Either Party. The Parties mutually agree that this Agreement is entered into for the purpose of compromising all disputed claims related to Guilford County Superior Court case no. 14 CVS 8630 and is not to be construed as an admission by any Party regarding the merit or lack of merit of the Parties' respective claims and defenses.

6. Obligation for Attorney Fees and Costs to Date. Defendant will assume liability, if any exists, for its attorney fees and costs incurred in the defense of this matter. Defendant also agrees to pay Plaintiff's attorney's fees to the extent set forth in Paragraph 1(b).


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7. **Rules as to Interpretation of Agreement.** Each Party and attorneys for each Party have reviewed this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party, shall not be employed in the interpretation of this Agreement. The validity, interpretation, construction, and performance of this Agreement shall be governed by the laws of the State of North Carolina and the state and federal courts of North Carolina shall have exclusive jurisdiction over any dispute or controversy arising out of this Agreement and the parties thereto.

8. **Entire Agreement.** It is understood and agreed that this Agreement expresses a full and complete settlement of any and all claims, the same having been denied, and regardless of the adequacy of the terms of this Agreement is intended to avoid any possible litigation, hearings, reviews, investigations, or controversies. This Agreement contains the entire agreement between Plaintiff and Defendant with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each. In the event that one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable.

9. **Counterparts.** This Agreement shall be executed in two counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the undersigned set forth their hands as of the date written below:

[Remainder of this page intentionally left blank]

 
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By Plaintiff

8-26-15
DATE

Nettie C. Smith
Nettie C. Smith

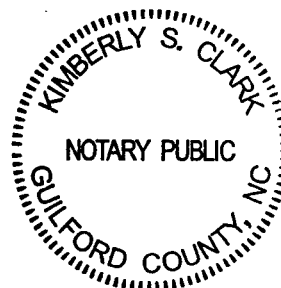
NORTH CAROLINA

Guilford COUNTY

On this the 26 day of August, 2015, before me personally appeared
Nettie C. Smith, to me known to be the person described herein, and who
executed the foregoing instrument; and she acknowledged that she voluntarily executed this
Agreement.

Kimberly S. Clark
Notary Public

My commission Expires: 11-8-2016



Nettie C. Smith
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By NC Department of Health and Human Services

9-17-15
DATE

Eddie Weaver
Eddie Weaver, Director
North Carolina Department of Health and Human Services
Division of Services for the Blind

NORTH CAROLINA

Wake COUNTY

On this the 17th day of September, 2015, before me personally appeared
Eddie Weaver, to me known to be the person described herein, and who
executed the foregoing instrument; and ~~she~~ acknowledged that ~~she~~ voluntarily executed this
Agreement.

Veronica Duke Wolf

Notary Public

My commission Expires: 4-15-17

NA / EW
Plf. / Def.